



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2005

Mr. Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2005-00093

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 216696.

The Texas Alcoholic Beverage Commission (the "commission") received a request for information relating to any investigation from 2004 concerning a named business. You state that the commission has released some of the requested information, in redacted form, and claim that the submitted information is excepted from disclosure under sections 552.101, 552.115, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

¹We note that the requestor is the District Manager for State Representative Jim Pitts. She makes this request from her office email account and requests that the information be sent to Representative Pitts at his district office. Section 552.008 of the Government Code provides that a governmental body shall provide copies of information, including confidential information, to an individual member, agency, or committee of the legislature if requested for legislative purposes. The section provides that disclosure of excepted or confidential information to a legislator does not waive or affect the confidentiality of the information or the right to assert exceptions in the future regarding that information, and provides specific procedures relating to the confidential treatment of the information. Gov't Code § 552.008(b). An individual who obtains confidential information under section 552.008 commits an offense if that person misuses the information or discloses it to an unauthorized person. Gov't Code § 552.352(a-1). If the requestor is seeking the requested information for "legislative purposes," the commission must provide the information to the requestor.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information made confidential by other statutes. Section 5.48 of the Alcoholic Beverage Code provides as follows:

(a) “Private records,” as used in this section, means all records of a permittee, licensee, or other person other than the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license, or in a periodic report relating to the importation, distribution, or sale of alcoholic beverages required by the commission to be regularly filed by a permit or licensee.

(b) The private records of a permittee, licensee, or other person that are required or obtained by the commission or its agents, in connection with an investigation or otherwise, are privileged unless introduced in evidence in a hearing before the commission or before a court in this state or the United States.

The term “privileged” in this statute has been construed to mean “confidential” for purposes of the Public Information Act (the “Act”). Attorney General Opinion JM-1235 at 2 (1990); Open Records Decision Nos. 186 (1978), 62 (1974). Thus, section 5.48 makes confidential any records required or obtained by the commission, with the exception of “the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license” and “a periodic report relating to the importation, distribution, or sale of alcoholic beverages required by the commission to be regularly filed by a permittee or licensee.” Alco. Bev. Code § 5.48. You state that the requested information consists of “private records” obtained by the commission in connection with an investigation. Further, the commission asserts that these documents have never been introduced into evidence at any judicial proceeding. Therefore, we agree that Attachment C must be withheld under section 5.48 of the Alcoholic Beverage Code in conjunction with section 552.101 of the Government Code.

You state that you have provided the information in Attachment D to the requestor with certain redactions. We note that the Seventy-eighth Legislature renumbered former section 56.001 of the Occupations Code as section 58.001. *See* Act of June 21, 2003, 78th Leg., R.S., ch. 1275, § 2(112), 2003 Tex. Sess. Law Serv. 4146. Section 58.001 of the Occupations Code provides as follows:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 58.001. You indicate and the documents reflect that the social security number you have highlighted belongs to an applicant for or holder of a license issued by the commission. Accordingly, we agree that this social security number falls under section 58.001 of the Occupations Code, as encompassed by section 552.101, and therefore must be withheld.

Additionally, we note that the remaining social security numbers may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers in the responsive information are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the commission should ensure that no such information was obtained or is maintained by the commission pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.115 of the Government Code provides that a birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from required public disclosure except that "a death record is public information and available to the public on and after the 25th anniversary of the date of death as shown on the record filed with the bureau of vital statistics or local registration official." Since section 552.115 only applies to a death certificate maintained by the bureau of vital statistics or local registration official, the commission may not withhold the death certificate submitted as Exhibit E pursuant to that provision. *See* Open Records Decision No. 338 (1982).

You also raise section 552.130 of the Government Code. Section 552.130 prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, the commission must withhold the Texas driver's license information you have highlighted pursuant to section 552.130 of the Government Code.

In summary, we conclude that you must withhold Attachment C under section 552.101 of the Government Code in conjunction with section 5.48 of the Alcoholic Beverage Code. In regard to Attachment D, we conclude that: 1) you must withhold the social security number you highlighted under section 552.101 of the Government Code in conjunction with section 58.001 of the Occupations Code; 2) the remaining social security numbers may be

confidential under federal law; and 3) you must withhold the section 552.130 information you have highlighted. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Crawford".

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/sdk

Ref: ID# 216696

Enc. Submitted documents

c: Ms. Dinah Weable
Office Manager for the Honorable Representative Jim Pitts
200A North Rogers
Waxahachie, Texas 75165
(w/o enclosures)